SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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DAVID NORKIN,

Plaintiff,

-against-

DLA PIPER RUDNICK GRAY CARY, LLP,

Defendant.

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COMPLAINT

Index No. 106384/05

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DLA PIPER RUDNICK GRAY CARY US LLP
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Plaintiff, David Norkin, hereby files his original Complaint against defendant DLA Piper Rudnick Gray Cary, LLP, formerly known in 2002 as Piper Rudnick (hereinafter referred to as "Piper"):

PARTIES

1. Plaintiff David Norkin ("Norkin") is a resident of the State of New York. From 1983 until May 2002, Norkin was President and sole beneficial shareholder of Britestarr Homes, Inc. ("Britestarr"), a New York corporation.

2. Defendant Piper is a limited liability partnership with several offices around the United States, including one in New York, New York, engaged in the practice of law.

FACTUAL BACKGROUND

3. In September 1988, Britestarr purchased approximately twenty-eight (28) acres of real property in Bronx, New York (the "Oak Point Site"). The property is located just across the East River from Manhattan in a well-established

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industrial area. The Site is zoned for heavy industrial use and is ideally suited to serve as home to a large power plant, a permitted use.

4. During 1998, a power developer named ABB Equity Ventures ("ABB") sought to develop a power plant project in New York.

5. In late 1998, ABB approached Britestarr through Norkin and commenced negotiations to purchase the Oak Point Site from Britestarr so that ABB could develop a power plant project on the Site.

6. The parties negotiated and entered into an option agreement dated December 31, 1998 (the "Option Agreement"), by which Britestarr granted ABB an exclusive option to purchase the Oak Point Site for three years. In exchange for the three year option, ABB agreed to pay Britestarr option payments totalling $1.4 million.

7. The Option Agreement also served as the sales contract between the parties. Upon exercise, Britestarr could choose to receive $31.4 million in cash immediately in exchange for the property; alternatively, Britestarr could choose to receive an equity interest in the power plant to be built on its property that would entitle Britestarr to receive payments of approximately $225 million over thirty (30) years.

8. In the spring 1999, Norkin retained Piper to assist him and Britestarr in advancing the transaction with ABB.

9. Specifically, Norkin retained Mitch Fenton, a Piper real estate partner, who, in turn, brought into the matter two of Piper's project finance and energy partners, Ken Willig and Dean Colucci.

10. Piper lawyers Willig, Colucci and Fenton assisted Britestarr and Norkin in advancing the transaction so that ABB would ultimately exercise its option and purchase the Oak Point Site from Britestarr.

11. In August 2000, Fenton left Piper and joined Buchanan Ingersoll's New York office.

12. Between February 1, 1999 and August 22, 2001, ABB paid the $1.4 million in option payments to Britestarr, a sub-chapter S corporation.

13. In February 2000, Piper opened a client trust account for Britestarr's benefit (the "Escrow Account"). Of the $1.4 million, Piper received and deposited a little over $1 million into the Escrow Account. Piper then disbursed all of this money to Norkin as compensation for Mr. Norkin serving as Britestarr's President and/or reimbursement for or advance of expenses.

A. Piper advised Norkin on the Britestarr ownership dispute:

14. At some point after Britestarr's formation, record ownership of its stock shares was transferred to Norkin's wife,

Friema Norkin. Thereafter, to finance its purchase of the Oak Point Site, Britestarr obtained a loan from Lloyds Bank. To secure the loan, Lloyds required Friema Norkin to pledge the Britestarr stock shares. In connection with the pledge, Friema Norkin delivered the actual Britestarr stock shares certificate to Lloyds. Thereafter, when Norkin and Friema Norkin divorced, Friema Norkin conveyed her interest in the Britestarr stock shares to Norkin pursuant to their separation agreement and divorce decree. The original share certificate, however, remained with Lloyds. Lloyds was notified in or about 1990 of the divorce of the Norkins and the transfer of stock to David Norkin.

15. Britestarr defaulted on the Lloyds loan. In 2001, ABB stepped into the shoes of Lloyds by purchasing Lloyds' rights against Britestarr, including Lloyds' rights (if any) to the Britestarr shares pursuant to the pledge. ABB commenced a lawsuit in Norkin's personal bankruptcy proceedings contending that Friema Norkin was the rightful owner of the Britestarr stock shares.

16. Piper, as counsel for Norkin and Britestarr, reviewed documents related to the ownership, as between plaintiff and his former wife, of the Britestarr shares, and gave plaintiff advice in his personal capacity as to the ownership of the shares.

17. In spring 2002, ABB conveyed to Piper an offer to pay more than $1 million to extend the option period of 18-20 months. Acceptance of this offer would have enabled Norkin to

settle ABB's claim in his personal bankruptcy over the ownership of the Britestarr shares. Additionally, extending ABB's option would have benefitted Britestarr and plaintiff by giving ABB time to acquire the permits necessary to consummate purchase of the Oak Point property. The one million dollars to be paid for the option would have insured Britestarr's ability to operate for the foreseeable future without the need to consider bankruptcy.

18. Although ABB's one million dollar option/settlement offer was clearly beneficial to both Norkin and Britestarr, Piper failed to even advise Britestarr or Norkin of the offer.

B. Piper erroneously -- or fraudulently -- advises Norkin that Britestarr should file for bankruptcy and that Norkin should reside at President:

19. Between March and May 2002, Piper 1) advised Britestarr to file bankruptcy and 2) advised Norkin to resign as Britestarr's President.

20. Piper's lead bankruptcy lawyer, Tom Califano, along with other attorneys at Piper, filed several pleadings explaining why Britestarr filed bankruptcy. Piper's stated reason for advising Britestarr to file was that bankruptcy would allow Britestarr to quickly liquidate the Oak Point Site in a bankruptcy auction. Piper contended that Britestarr could not sell the property outside bankruptcy due to several impediments.

21. Piper's conclusion that filing bankruptcy would allow Britestarr to eliminate all impediments to a sale was in

error. It made no sense for Britestarr to file bankruptcy in order to sell the Oak Point Site.

22. Britestarr had a perfect alternative to bankruptcy. Rather than filing bankruptcy, Britestarr could have, and should have, accepted ABB's offer to pay Britestarr $1 million in additional option payments to preserve for another 18-20 months Britestarr's ability to sell the Site. Absent a bankruptcy filing and Piper's advice to Norkin personally to resign, Norkin could have and would have remained as Britestarr's President.

D. Piper's advice to Norkin to resign caused him to lose wages:

23. Piper's legal advice to Norkin to resign his position as Britestarr's President caused him to lose his right to obtain a salary and other benefits as President.

E. Piper was operating under a conflict of interest in Spring 2002:

24. During this time Piper was operating under a conflict of interest, which Piper never disclosed to plaintiff. While Piper was representing Britestarr and plaintiff, Piper was simultaneously serving as project counsel for a competing power plant project. In the summer 2001, Piper became project counsel for the TransGas power plant project, which involved developing a large power plant in Brooklyn. This proposed Brooklyn plant would compete with the plant that ABB sought to build on Britestarr's property.

25. Both power plants would sell power into New York. Both projects would compete over the same resources, such as construction financing and agreements to sell power, and permit requirements from the State of New York.

26. Piper stood to receive much larger legal fees as project counsel for the TransGas project than it would receive as landowner's counsel in the Oak Point project.

AS AND FOR A FIRST CAUSE OF
ACTION - BREACH OF FIDUCIARY DUTY

27. Norkin repeats and realleges the allegations made in Paragraphs 1 through 26 as fully set forth herein.

28. As counsel for Norkin, Piper owned a fiduciary duty to Norkin.

29. Piper breached its fiduciary duty to Norkin as follows:

a. representing a competing power plant project beginning in May 2001 -- the TransGas project -- when Piper was obligated to advance the Oak Point project, the project in which its client, Britestarr, was participating, and failing to advise Norkin of the conflict; and

b. failing to advise Norkin of ABB's March 2002 settlement proposal that would have resolved the ownership dispute and left Norkin as Britestarr's President.

30. By engaging in the foregoing acts and misconduct, Piper breached its fiduciary duties to Norkin, and Norkin has

suffered damages in excess of $10,000,000, including the right to receive salary as Britestarr's President.

31. Because Piper acted maliciously, fraudulently, with gross negligence, or with flagrant, conscious disregard for and actual knowledge of probable harm to Norkin, he is entitled to exemplary damages.

AS AND FOR A SECOND CAUSE OF ACTION
PROFESSIONAL MALPRACTICE/NEGLIGENCE

32. Norkin repeats and realleges the allegations set forth in Paragraphs 1-31 as fully set forth herein.

33. Piper, in its capacity as Norkin's attorneys, failed to exercise the reasonable and ordinary care of similarly situated professionals in preparing documents for, transacting business for, and providing advice to Norkin. Piper's standard of care in its representation of Norkin failed to meet the applicable professional standard of care in at least the following ways:

a. It advised Norkin to resign as Britestarr's President rather than advising him and Britestarr to accept ABB's settlement offer; and

b. It failed to advise Norkin of ABB's March 2002 settlement proposal that would have allowed Norkin to remain as Britestarr's rightful owner and President.

34. Norkin has suffered damages in excess of $10,000,000, including the right to receive salary as Britestarr's President.

RELIEF REQUESTED

WHEREFORE, Norkin prays that judgment be entered in his favor as follows:

a) compensatory damages on each cause of action in an amount to be determined at trial, but not less than $10,000,000, which would include the amount of money that he would have received in compensation for serving as Britestarr's President;

b) exemplary damages in an amount in excess of $10,000,000;

c) and such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 6, 2005

Yours, etc.,

Litman, Asche & Gioiella, LLP
Attorneys for Plaintiff

By: ______________________
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